

Subidas vs State of Kerala

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Court : Kerala

Decided On : Jul-07-2022

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : Bail Appl./4848/2022

Appellant : Subidas

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
THURSDAY, THE 7TH DAY OF JULY 2022 / 16TH ASHADHA, 1944
CRIME NO.408/2022 OF Aryancode Police Station, Thiruvananthapuram
PETITIONERS/A4, A5, A15 & A19:

1 SUBIDAS AGED 27 YEARS S/O. CHRISTUDAS, C.R. BHAVAN,
PUNNAKODE, CHEMBOORU, KEEZHARoor VILLAGE,
NEYATTINKARA, THIRUVANANTHAPURAM DISTRICT. 2 SHIBIN
AGED 36 YEARS S/O. STEPHEN, GILAYAD, KARIKOTTUKUZH,
CHEMBOORU, KEEZHARoor VILLAGE, NEYATTINKARA,
THIRUVANANTHAPURAM DISTRICT. 3 ANIL JOSE AGED 50 YEARS

S/O. NESAMANI, AJIN BHAVAN, MUTTACHAL, VELLARADA DESOM, THIRUVANANTHAPURAM DISTRICT. 4 AJIN AGED 29 YEARS S/O. ANIL BOSE, AJIN BHAVAN, MUTTACHAL, VELLARADA DESOM, THIRUVANANTHAPURAM DISTRICT. BY ADV SHAJIN S.HAMEED

RESPONDENT/STATE: 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031 ADDL.2 REV.J.JAYARAJ S/O JUSTUS, AGED 56 YEARS RESIDING AT WILLS HOSTEL WARDEN QUARTERS LMS COMPUND , PALAYAM, THIRUVANANTHAPURAM 695033 IS IMPEADED AS ADDITIONAL R2 AS PER ORDER DATED 07.07.2022 IN CRL.M.A. NO.1 OF 2022 BY ADVS. PUBLIC PROSECUTOR SRI.ARUN.B.VARGHESE SRI.S.SREEKUMAR (SR.)(S-571) SRI.SUDHEER GOPALAKRISHNAN - PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This is an application for regular bail. The petitioners are the accused

Nos.4, 5, 15 and 19 in Crime No.408/2022 of Aryancode Police Station. The aforesaid crime was registered for the offences punishable under Sections 143, 147, 148, 324, 307, 427 and 120B read with Section 149 of Indian Penal Code and under Sections 2(a) and 3 read with Section 5 of the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019.

2. The allegation against the petitioners is that, in connection with the

Platinum Jubilee Celebration of CSI Diocese, a torch rally was inaugurated by the Moderator of Diocese on 02.06.2022. Later, on 12.06.2022 the torch rally inaugurated as mentioned above, headed towards Amboori and by 5.55 p.m. and it reached Manjamcode CSI Church. While the procession reached near the church the petitioners along with the other accused persons, allegedly pelted

stoned towards the procession and assaulted the members of the procession using sticks. On account of the same, the defacto complainant and some others sustained injuries. It was also alleged that, the accused persons damaged a vehicle bearing registration No.KL-01-BU-7976 and thereby caused mischief by causing loss of Rs.2 lakhs. Annexure A is the First Information Report registered in connection with the same.

3. As part of the investigation, the petitioner herein were arrested on 13.06.2022 and since then they are under detention. This application is submitted in such circumstances.

4. Heard Sri.Shajin S. Hameed, learned counsel appearing for the petitioners and Sri.Sudheer Gopalakrishnan, learned Public Prosecutor appearing for the State and Sri.Arun B.Varghese, learned counsel appearing for the defacto complainant.

5. The learned counsel for the petitioners contends that, the petitioners are innocent of the allegations, and the incident occurred in connection with a clash between two fractions of people. According to the learned counsel for the petitioners they were onlookers, and they never took part in the assault against the procession.

6. On the other hand, the learned Public Prosecutor and the learned counsel appearing for the defacto complainant would oppose the aforesaid contention. According to them, Annexure A First Information Report contains the names of the petitioners herein and their active role in the commission of the offence are specifically mentioned therein. In such circumstances, dismissal of the application is sought for.

7. I have perused the records and heard the contentions from either side. It is discernible from the records that, in connection with the very same incident a counter case is also registered as evidenced by Annexure C, numbered as Crime No.410/2022, against some unidentifiable persons who allegedly took

part in the procession and allegedly attacked the members of the faction of the people to which petitioners belong. The aforesaid crime was registered for the offences punishable under Sections 447, 324, 308 read with Section 34 of Indian Penal Code. The specific case of the learned counsel for the petitioners is that, the incident has occurred during the course of clash between the two factions of people. Even though the learned counsel for the defacto complainant disputes the aforesaid contention of the petitioners, registration of Annexure C crime would indicate that such a clash indeed has occurred. Both the matters are under investigation.

8. The contents of Annexure A would reveal that there were several

persons present in the scene of occurrence. The First Information Statement does not contain any details of any specific acts committed by each individual separately. The allegations are general in nature even though about 16 persons were named therein along with other unidentifiable persons. Thus it is evident that it was mob attack and as of now there are no materials indicating the specific acts committed by each of the petitioners. Therefore, the possibility of

the persons who simply witnessed the incidents being booked for the offence cannot be ruled out.

9. Now the petitioners are in custody for about 24 days. In the facts and

circumstances of the case, further custody of the petitioners does not appear to be necessary. In such circumstances, bail can be granted to the petitioners subject to stringent conditions. However, since some of the offences are under the provisions of the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019, before releasing the petitioners, the conditions as contemplated under Section 8 of the said Act has to be complied with. The amount of loss allegedly cause by the accused persons stated in the FIS is Rs.2 lakhs. However, learned counsel for the petitioners points out that as per the report submitted by the Motor Vehicle Inspector, the loss is about Rs.13,000/- only. The aforesaid aspect is disputed by the learned counsel for

the defacto complainant. In such circumstances, it is ordered that, while releasing the petitioners on bail, the compliance of Section 8 of the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019 has to be ensured by the learned Magistrate at the time of execution of the bond. To be precise, the amount to be deposited by the petitioners or the amount of bank guarantee to be furnished by them as the case may be, as contemplated under section 8 of the said Act, shall be fixed by the learned

Magistrate after taking into account the relevant materials placed on record. Therefore, this application is allowed, and the petitioners are granted bail subject to following conditions:

(i) The petitioners shall be released on bail on executing a bond for Rs. 1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Magistrate.

(ii) The petitioners shall fully co-operate with the investigation.

(iii) The petitioners shall appear before the investigating officer between 10.00 a.m and 11.00 a.m on every Wednesday until the filing of the final report.

(iv) The petitioners shall also appear before the investigating officer as and when required.

(v) The petitioners shall not commit any offence of like nature while on bail.

(vi) The petitioners shall not make any attempt to contact any of

the prosecution witnesses, directly or through any other person, or try to tamper with the evidence or influence any witnesses or other persons related to the investigation.

(vii) The petitioners shall not leave the State of Kerala without the

permission of the trial Court. Sd/- ZIYAD RAHMAN A.A. JUDGE scs APPENDIX OF BAIL APPL. 4848/2022 PETITIONER ANNEXURES Annexure-A PHOTOCOPY OF THE FIR IN CRIME NO.408/2022 OF ARYANCODE POLICE

STATION. Annexure-B PHOTOGRAPHS SHOWING THAT SOME AMONG THE MEMBERS OF THE PROCESSION ARE ARMED WITH STICKS. Annexure-C PHOTOCOPY OF THE FIR IN CRIME NO.410/2022 OF ARYANCODE OF POLICE STATION. Annexure-D FREE COPY OF THE ORDER DATED 17/06/2022 IN CMP.NO.625/2022 OF THE JUDICIAL 1ST CLASS MAGISTRATE COURT-I, NEYYATTINKARA.

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